

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1837

IN THE MATTER OF:

Served April 27, 1978

Application of DIAMOND TOURS,)
INC., for Temporary Authority to)
Perform Charter Operations Pursuant)
to Contract - United States Navy)

Case No. AP-78-3

By application filed February 6, 1978, as supplemented March 24, 1978, Diamond Tours, Inc. (Diamond Tours), seeks temporary authority pursuant to Title II, Article XII, Section 4(d)(3) of the Compact to transport, in charter operations pursuant to contract, United States Department of the Navy personnel between points within the Metropolitan District. Diamond Tours has entered into a bilateral contract with the Navy to provide the above-described transportation service from February 1, 1978, through December 31, 1978, at the following rates:

\$18.50 per hour on mileage under 11 miles in each hour;
\$1.20 for additional mileage, 11 miles or more in each
hour.

Diamond Tours has submitted in support of its application a copy of the above-mentioned contract as well as a letter from counsel for the Navy. These documents indicate that the Navy's purpose in contracting for the above-described services was to augment the capacity of its existing transportation facilities and that the Navy considered execution of the contract advantageous to the national defense.

These documents further indicate that the contract was awarded to Diamond Tours in accordance with Navy specifications that require the contract to be awarded to a small business concern having average annual receipts for the preceding three fiscal years not in excess of \$5,000,000. Diamond Tours alleges that it is the only carrier which bid on the above-described contract that qualifies as a small business concern. Apparently, Diamond Tours argues that there is no carrier service capable of meeting the Navy's need.

On April 3, 1978, Atwood's Transport Lines, Inc. (Atwood's), filed its protest herein. Atwood's holds WMATC Certificate of Public Convenience and Necessity No. 14, which authorizes, inter alia, the following service:

IRREGULAR ROUTES:

CHARTER OPERATIONS, round trip or one-way

Between points in that part of the Metropolitan District located within the Capital Beltway on the one hand, and, on the other, points in the Metropolitan District.

Atwood's unsuccessfully submitted the following bid on the above-described contract:

\$20.00 per hour on mileage under 11 miles in each hour; \$1.20 for additional miles, 11 miles or more in each hour.

Title II, Article XII, Section 4(d)(3) of the Compact authorizes the Commission to grant temporary authority, with or without hearing and in its discretion, to enable the provision of a service for which there is an immediate and urgent need, and where there is no carrier service capable of meeting such need. The Commission initially finds that there is no persuasive showing of an immediate and urgent need for the proposed service. The contract clearly contemplates service only for overflow traffic. No specific trips, dates or points of service are referenced, except as set forth below. Moreover, the territorial scope of the application appears overly broad, and we find the boiler-plate, unverified assertion in the above-described contract that the execution of the contract is advantageous to the national defense to be lacking sufficient probative detail.

The Commission further finds that Atwood's is capable of meeting the Navy's transportation needs. The Navy's contract with Diamond Tours specifies points of service at Washington, D. C., and Arlington, Va., both within the scope of Atwood's authority.

The Commission finds unpersuasive Diamond Tours' argument that it alone can provide service to the Navy as a small business concern. It is readily apparent from the contract submitted herein, that the Navy's decision to contract with a small business concern was discretionary and not mandated by any Department of Defense directive or regulation. Accordingly, the selection of Diamond Tours appears to be based on price and preference, considerations beyond the scope of our inquiry under the Compact.

Finally, the Commission notes that the denial of this application should not result in undue expense to the Navy, inasmuch as the difference between the bids submitted by Atwood's and Diamond Tours are de minimis and the volume of service required is purely speculative.

THEREFORE, IT IS ORDERED that the above-referenced application of Diamond Tours, Inc., be, and it is hereby, denied.

BY DIRECTION OF THE COMMISSION:


GREGORY P. BARTH
Acting Executive Director

STRATTON, Chairman, concurring:

While I agree with my colleagues that applicant has failed to satisfy the criteria of Title II, Article XII, Section 4(d)(3) of the Compact, a further explanation of our denial herein appears to be in order.

The record shows that Navy's decision to contract with a so-called "small business concern" is discretionary. Promotion of small businesses is a national policy goal which we should not ignore, and increased competition can only benefit the transportation industries. Consideration of those factors is appropriate when the Commission is called upon to determine the requirements of the "public convenience and necessity" when it considers an application for permanent operating authority. Here, however, the issue is much narrower, namely whether an already certificated carrier can meet Navy's transportation needs. Atwoods meets this standard. Absent some binding legal prohibition to a contract between Navy and Atwoods, a grant of temporary authority to Diamond is precluded by the Compact.